IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 553 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT FOOD INSPECTOR

Versus

MANOHAR NAVEDRAI LALVANI

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Appearance:

MR KP RAVAL, ADDL. PUBLIC PROSECUTOR for Petitioner

RULE SERVED for Respondent No. 1, 2, 3, 4, 5

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/05/2000

ORAL JUDGEMENT

1. This is a revision u/s 397 read with section 401 of the Criminal Procedure Code by the State of Gujarat on behalf of the Food Inspector, Office of the Commissioner of Food & Drugs Control Administration, Bhavnagar, challenging the order of discharge passed in favour of

the original accused by the learned JMFC, Palitana in Criminal Case No.571/97. The accused therein were charged of having committed an offence of misbranding under Rule 32 [e] of the Prevention of Food Adulteration Rules, 1955.

2. In the said criminal case, the accused gave an application exh.12 for being discharged, on a short and simple contention that the only adverse remark in the report of the public analyst in respect of the sample is that the same does not comply with the Rule 32[e] of the said Rules, and that the Supreme Court by its decision in the case of Dwarka Nath and another v/s Municipal Corporation of Delhi, reported in AIR 1971 SC 1844, declared Rule 32[e] of the said Rules to be ultra vires as being beyond the rule making power of the Government conferred by section 23[1] of the Prevention of Food Adulteration Act, 1954.

3. The learned Magistrate passed an order below exh.12 being the application of the accused for discharge, and after a detailed discussion on the facts and circumstances of the case, came to the conclusion firstly that the sample package in question does contain printing thereon as to the month and year of manufacture / packing, and therefore complies with Rule 32[f] of the said Rules. Secondly, the learned Magistrate found on the question of fact that the sample in question does not contain any printing indicating any distinctive batch number, lot number or code number, and therefore, would otherwise be in breach of Rule 32[e]. However, the learned Magistrate found in view of the decision of the Supreme Court in the case of Dwarka Nath [supra], that since the said Rule is ultra vires, breach thereof would not result into any offence under the Act, and therefore, discharged the accused.

4. It is pertinent to note however that the learned counsel for the prosecution had emphatically argued before the learned Magistrate that after the aforesaid decision of the Supreme Court, Rule 32 has been amended by Central Government Notification dated 29th April 1987, which brought the amended rule in the effect from 30th of April 1989. This contention however has been merely noted by the learned Magistrate without dealing with it in any manner whatsoever.

5. What requires to be noted is that the aforesaid decision of the Supreme Court in the case of Dwarka Nath [supra] dealt with Rule 32[e] as it then stood. Once

Rule 32[e] was amended in the year 1987, and the amendment came into effect from 30th April 1989, the said decision obviously would not apply to the amended Rule. What the learned Magistrate failed to appreciate is that, as per the report of the chemical analyzer, the sample in question did not comply with Rule 32[e], on the date when the sample was seen, inspected and analyzed by the chemical analyzer. Therefore, it is obligatory upon the learned Magistrate to look upon the amended rule and to establish from the evidence on record as to whether the sample in question complied with the said statutory requirement or not. There was therefore no justification on part of the learned Magistrate to pass an order of discharge on the basis the Supreme Court decision in the case of Dwarka Nath [supra], particularly where the amended Rule 32[e] was not the subject matter of the Supreme Court decision.

6. The impugned order passed by the learned Magistrate is therefore clearly erroneous and requires to be quashed and set aside. Accordingly, it is so held and directed.

7. The trial Court is directed to take up the hearing of Criminal Case No.571/97 as expeditiously as possible and to hear and dispose of the same in accordance with law.

8. Rule is made absolute accordingly.

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